NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202-659-9320

December 19, 1974

Mr. Nicholas H. Zumas
1990 M Street, N. W.
Washington, D. C. 20036

Dr. Murray M. Rohman
Professor of Industrial Relations
Texas Christian University
Fort Worth, Texas 76129

Mr. Milton Friedman
850 Seventh Avenue
New York, New York 10019

Gentlemen:

This will supplement our previous letters with which we forwarded to you copies of Awards of Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 Agreement.

There is attached copy of Award No. 385, Case No. H&RE-29-W, dated December 18, 1974 rendered by Special Board of Adjustment No. 605.

Yours very truly,

J. F. Griffin

cc. Chairman, Employees National Conference Committee (10)
Messrs. R. W. Smith (2)
C. L. Dennis (2)
S. G. Bishop
E. J. Neal
C. J. Chamberlain (2)
M. B. Frye (2)
W. W. Altus
H. C. Crotty (2)
J. J. Berta (2)
Lester Schoene, Esquire
R. K. Quinn, Jr. (3)
W. F. Euker
T. F. Strunck

Award No. 385
Case No. H&RE-29-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Hotel and Restaurant Employees and Bartenders International Union
and
Atchison, Topeka and Santa Fe Railway Company

QUESTION AT ISSUE:

(1) Did the Atchison, Topeka and Santa Fe Railway Company violate the February 7, 1965 Agreement when it failed and refused to make Mr. Gene L. Attig whole in accordance with Article IV, Section 2, of the Agreement for the month of January, 1974, and subsequent months in which he did not earn, through service in the craft or class of dining car employee covered by his seniority as such employee, the equivalent of his base period compensation as adjusted in accordance with said Section.

(2) If the answer to Question (1) is in the affirmative, shall the Atchison, Topeka and Santa Fe Railway Company now restore Mr. Gene L. Attig to protected status under the Agreement and pay him the difference between his earnings in the craft or class of dining car employee covered by his seniority as such employee and his base period compensation as adjusted and as specified in Article IV, Section 2, of the February 7, 1965 Agreement for January, 1974, and subsequent months.

OPINION OF BOARD. The initial question to be determined in this dispute is whether the Board has jurisdiction to consider the matter. Carrier contends that the original claim was filed in July, 1967, declined by Carrier's highest designated officer in October, 1967, and the Organization abandoned the progression of the claim for approximately seven years. Under the circumstances, Carrier further asserts, this Board has no jurisdiction to consider the merits of the claim

by virtue of the mandate of the Handling of Claims or Grievances procedures*/ of the February 7, 1965 Agreement as they relate to Article VI, Section 13 of the schedule agreement. The pertinent portion of Section 13 provides:

> "[A]ll claims or grievances involved in such decision shall be barred and deemed to have been abandoned unless within six (6) months from date of said officer's decision proceedings are instituted before a tribunal of competent jurisdiction established by law or agreement to secure a determination or adjudication of the rights of the parties." (Underscoring added).

By letter dated July 24, 1967, the Organization's General Chairman filed a time claim with Carrier on behalf of a number of employees including this Claimant. The letter read in part, as follows:

> "Please consider this as a Time Claim filed on behalf of each of the employees listed in Exhibit 'A' attached hereto, that they be paid the difference between what they have received in compensation from your Carrier and the amount they were initially guaranteed under the February 7, 1965 Agreement, for each month beginning with the month within which your Carrier contends they lost their protected status under the Agreement." (Underscoring added).

Subsequently, by letter dated October 2, 1967, Carrier denied the Organization's claim contending that the employees lost their protected status by failing to comply with the provisions of Article II, Section 1 of the February 7, 1965 Agreement.

---

*/ "Rules and procedures governing the handling of claims or grievances including time limit rules, shall not apply to the handling of questions or disputes concerning the meaning or interpretation of the provisions of the February 7, 1965 Agreement. Such questions or disputes may be handled at any time and may be taken up directly between the General Chairman and the highest operating officer of the carrier designated to handle such matters.

Individual claims for compensation alleged to be due pursuant to the Agreement shall be handled in accordance with the rules governing the handling of claims and grievances, including time limit rules, providing that the time limit on claims involving an interpretation of the Agreement shall not begin to run until 30 days after the interpretation is rendered."

On April 9, 1974, the Organization filed another claim on behalf of Claimant requesting that he be restored to full protection under the February 7, 1965 Agreement, and that he be compensated for monies lost as a result of his removal from protected status. The period of compensation (as reflected in Part 2 of the Questions at Issue) is for January 1974 and subsequent months.

The Organization takes the position that Claimant was never personally notified that he had lost his protected status, had filed no time slips, and the Organization's letter of July 24, 1967, was merely a general assertion of a claim and has no effect on Claimant's rights to be compensated as a protected employee.**/

Prior awards of this Board as well as those of the National Railroad Adjustment Board compel the conclusion that we have no jurisdiction to consider either the other procedural issues or the merits of this dispute.

In Award No. 384, this Board held:

> "The question as to the merits of this dispute was earlier presented to this Board in Case No. H&RE-1-SE. The Board declined to consider the merits, and, in our Award No. 357, dismissed the claim because the time limit provisions were not complied with.
>
> The identical claim was filed in both cases except that the claim in this dispute included later dates of claim for compensation.
>
> The Organization essentially argues that it should be allowed to have the merits determined in a claim that was timely filed, and should not be prevented from doing so by virtue of a previous claim that was dismissed because of time limits.
>
> Consistent with the large majority of awards emanating from various forums in the railroad industry, the Board is constrained to find that the Organization's contention is without merit. In our award No. 353, we held:
>
> > 'Numerous awards of the various divisions of the National Railroad Adjustment Board have considered and interpreted Time Limit rules with uniform conclusion: Once a claim is filed, whether a continuing claim or not, proceedings

---

**/ The Organization argues that the compensation period beginning in January, 1974, was proper in that his claim arose at that time as a result of Amtrak's taking over Carrier's passenger service. Prior to this time, it contends, Claimant suffered no loss.

must be instituted within nine months after the claim is denied by Carrier's highest designated officer. Otherwise the Board is without jurisdiction to consider the substantive issues of the claim.'

The refiling of an identical claim between the same parties and the same claimants does not revive the claim or revest this Board with jurisdiction."

In Award No. 310, this Board found:

"The salient issue in this dispute may be stated as follows: If a claim is made regarding the meaning or interpretation is taken up with the highest officer, can a related and ancillary compensation claim be also considered directly with the highest officer without being subject to the time limit and other rules governing the handling of grievances.

The Board holds that it cannot.

To hold that the filing of a claim for an interpretation of the provisions of the February 7 Agreement would waive the requirement of timely processing of related compensation claims would render the Interpretations regarding HANDLING OF CLAIMS OR GRIEVANCES meaningless. As was stated in our Award No. 131: 'Practically, there is no reason why a money claim, whether or not it requires an interpretation of the Agreement, should not be filed in accordance with the rules, ***'."

See also Award Nos. 325 and 357 of this Board; Third Division Award Nos. 13623 and 17030; Second Division Award No. 2177.

AWARD

Claim dismissed.

Nicholas H. Zumas.

Dated: Washington, D. C.
December 18, 1974